

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,**

v.

**FRESHWATER ELEMENTARY SCHOOL DISTRICT, CALIFORNIA
DEPARTMENT OF EDUCATION, AND CALIFORNIA
COMMISSION ON TEACHER CREDENTIALING.
OAH CASE NUMBER 2019090479**

**ORDER DISMISSING CALIFORNIA DEPARTMENT OF EDUCATION FOR
LACK OF JURISDICTION**

On September 13, 2019, Parents on behalf of Student filed a Due Process Hearing Request, often called a complaint, with the Office of Administrative Hearings, often called OAH. As parties to the complaint, Student named Freshwater Elementary School District, California Department of Education, California Commission on Teacher Credentialing, Sinon Talty, Gretchen Miller, Rebecca Sibley-Baugh, Michelle Collin, Greg Hall and Audrey Dieker. On September 23, 2019, OAH granted Freshwater's motion to dismiss Sinon Talty, Gretchen Miller, Rebecca Sibley-Baugh, Michelle Collin, Greg Hall and Audrey Dieker as parties.

On September 18, 2019, California Department of Education filed a motion to dismiss itself as a party to the complaint on the grounds that it is not responsible for

providing a free appropriate public education to Student. OAH did not receive a response to the motion from any party.

APPLICABLE LAW

There is no summary judgment procedure in special education cases. OAH will, however, dismiss allegations and cases not within its jurisdiction. OAH has jurisdiction only over claims alleging the Individuals with Disabilities Education Act, referred to as IDEA, or California special education laws were violated. Special education due process hearings may involve the parent or guardian, a student, and “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, or any other public agency providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

Student’s complaint names California Department of Education as a responsible public agency. The complaint does not allege how California Department of Education is a public agency responsible for providing special education services to Student. California Department of Education argues it should be dismissed as a party because it is not the local education agency responsible for providing special education or related services to Student. Student alleges in the complaint that California Department of Education erroneously concluded that Freshwater was in compliance with the IDEA. Student does not allege that California Department of Education was responsible for providing Student with special education or related services. California Department of Education is not a public agency responsible for providing special education services to Student therefore, OAH does not have jurisdiction over it.

ORDER

California Department of Education's motion to be dismissed as a party is granted. This matter shall proceed against Freshwater Elementary School District and California Commission On Teacher Credentialing as presently scheduled.

DATED: September 23, 2019

DocuSigned by:

Linda Johnson

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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings